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CENTRAL DIST. OF CALIF.
SANTA ANA

BY

FISHER & PHILLIPS LLP
John E. Lattin, IV (SBN 167876)
E-mail: jlattin@laborlawyers.com
2050 Main Street, Suite 1000
Irvine, CA 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

FISHER & PHILLIPS LLP
Christopher C. Hoffman (SBN 176334)
E-mail: choffman@laborlawyers.com
James C. Fessenden (SBN 238663)
E-mail: jfessenden@laborlawyers.com
4747 Executive Drive, Suite 1000
San Diego, CA 92121
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

Attorneys for Defendant
ORKIN SERVICES OF CALIFORNIA, INC.
(erroneously sued as "Orkin Exterminating Company, Inc.")

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ISRAEL SALAZAR, Individually and
on Behalf of Others Members of the
Public Similarly Situated,

Plaintiff,

v.

ORKIN EXTERMINATING
COMPANY, INC., and DOES 1-10,
inclusive,

Defendants.

CASE NO.

SACV11-1014 JST(ANx)

[Removed from State Court, Case
No. 30-2011-00470880-CU-OE-
CXC)]

NOTICE OF REMOVAL
UNDER CLASS ACTION
FAIRNESS ACT

Action Filed: April 27, 2011

TO THE CLERK OF THE ABOVE ENTITLED COURT AND PLAINTIFF
ISRAEL SALAZAR AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Orkin Services of California, Inc. (erroneously sued as “Orkin Exterminating Company, Inc.”) (“Defendant” or “Orkin”) hereby removes the below referenced action from the Superior Court for the State of California, County of Orange, to the United States District Court for the Central District of California. Removal is based on 28 U.S.C. §§ 1332(d) (the “Class Action Fairness Act”), 1441(b) and 1446 on the following grounds:

STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”), which was enacted on February 18, 2005. *See* 28 U.S.C. § 1332(d). In relevant part, CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant and where the amount in controversy for the putative class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs. CAFA authorizes removal of such actions pursuant to 28 U.S.C. § 1446. As set forth below, this case meets all of CAFA’s requirements for removal and is timely and properly removed by the filing of this Notice.

PLEADINGS, PROCESS, AND ORDERS

2. On or about April 27, 2011, Plaintiff Israel Salazar (“Plaintiff”) filed a Class Action Complaint in the Superior Court for the State of California, County of Orange captioned *ISRAEL SALAZAR, Individually and on Behalf of Others Members of the Public Similarly Situated, v. ORKIN EXTERMINATING COMPANY, INC., and DOES 1- 10, Inclusive*, Case No. 30-2011-00470880-CU-OE-CXC (hereinafter, the “Complaint”). The Complaint was served on Defendant no earlier than June 9, 2011. Plaintiff alleges he was formerly employed by the Defendants as a “Pest Control Employee” in the State of California. (Compl., ¶¶ 16 - 17.) He further alleges the Defendants failed to pay him overtime wages,

1 failed to provide meal periods, failed to provide rest periods, deducted wages
 2 and failed to pay all wages due upon discharge. (Compl. ¶ 15, subd. (f).)
 3 Plaintiff accordingly seeks to represent a class, and a subclass. The class
 4 consists of all current and former Pest Control Technicians who are similarly
 5 situated to Plaintiff. The sub class consists of all Pest Control Technicians who
 6 no longer work for Defendant and were not paid all wages owed upon discharge.
 7 (Compl. ¶ 14.)

8 3. Plaintiff's Complaint purports to assert six (6) causes of action:
 9 (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to
 10 provide rest periods; (4) violation of California Labor Code §§ 221, 224, 400 - 410; (5)
 11 failure to timely pay wages; (6) unfair competition.

12 4. On June 9, 2011, Plaintiff caused to be served on defendant Orkin a
 13 copy of the Complaint, Summons and related documents. A true and correct
 14 copy of the Complaint, Summons and related documents served on defendant
 15 Orkin is attached hereto as **Exhibit "A."**

16 5. No further pleadings have been filed and no further proceedings
 17 related thereto have been heard in the Superior Court.

18 **JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT**

19 6. Section 4 of the Class Action Fairness Act of 2005, 28 U.S.C. §
 20 1332(d)(2),¹ as amended, provides in pertinent part as follows:

21 The district courts shall have original jurisdiction of any civil
 22 action in which the matter in controversy exceeds the sum or
 23 value of \$5,000,000, exclusive of interest and costs, and is a class
 24 action in which ...

25
 26 ¹ While there are a number of exceptions to this rule of original jurisdiction
 27 contained in amended 28 U.S.C. § 1332(d)(3)-(5), none of these exceptions are
 28 applicable to the instant action.

1 (A) any member of a class of plaintiffs is a citizen of a State
2 different from any defendant.

3 7. This is a civil action over which this Court has original jurisdiction
4 under 28 U.S.C. § 1332(d), and one that may be removed to this Court by
5 Defendant pursuant to 28 U.S.C. §§ 1441(b) and 1446.

6 **PURPORTED CLASS ACTION UNDER STATE LAW**

7 8. This action has been styled as a class action. (Compl., at page 1; ¶
8 1.)

9 **CITIZENSHIP**

10 *A. Plaintiff's Citizenship*

11 9. Plaintiff admits he is a resident of the State of California. (Compl. ¶
12 6.) Plaintiff further alleges he was employed by Orkin in the State of California
13 at all times relevant hereto. (Compl. ¶¶ 15 (f), 16, 17, 20 and 21.) Natural
14 persons are domiciled in the places they reside with the intent to remain or to
15 which they intend to return. *Kanter v. Warnter-Lambert Co.*, 265 F.3d 853, 857
16 (9th Cir. 2001). An existing domicile is presumed to continue. *Bank One, Texas,*
17 *N.A. v. Montle*, 964 F.2d 48, 50 (1st Cir. 1992); *McCann v. Newman Irrevocable*
18 *Trust*, 458 F.3d 281, 288 (3rd Cir. 2006). Therefore, "domicile once acquired is
19 presumed to continue until it is shown to have been changed." *Mitchell v. United*
20 *States*, 88 U.S. (21 Wall.) 350, 353, 22 L.Ed. 584 (1875). Plaintiff worked in
21 California, resided in California, and continues to reside in California. (Compl. ¶¶
22 6, 15 (f), 16, 17, 20 and 21.) He is therefore a citizen of the State of California.
23 See 28 U.S.C. § 1332(a)(1) (an individual is a citizen of the state in which he or she
24 is domiciled). Moreover, the putative class purports to include current employees
25 located in California as well. (Compl., ¶ 14.)

26 *B. Defendant's Citizenship*

27 10. A "corporation shall be deemed to be a citizen of any State by which
28 it has been incorporated and of the State where it has its principal place of

1 business.” 28 U.S.C. § 1332(c)(1). Defendant was at the time of the filing of this
2 action and continues to be a corporation organized under the laws of Delaware.
3 (Declaration of Jefferson B. Blandford (“Blandford Decl.”), ¶ 2.)

4 11. As the Supreme Court recently explained, a corporation’s principal
5 place of business is “the place where a corporation’s officers direct, control, and
6 coordinate the corporation’s activities. It is the place that Courts of Appeals have
7 called the corporation’s ‘nerve center.’” *Hertz Corp. v. Friend*, 130 S. Ct. 1181,
8 1190-1192 (2010) (*Hertz Corp.*). All of Defendant’s officers, including its
9 Chairman of the Board of Directors, its Chief Executive Officer, President, Chief
10 Operating Officer, Secretary and Treasurer are located in and at all times relevant
11 to this action have been located in Atlanta, Georgia. (Blandford Decl., ¶ 3.) All
12 decisions about Defendant’s business, operations and investments are made from
13 its headquarters in Atlanta, Georgia. (Blandford Decl., ¶ 3.) All of its critical
14 administrative personnel, such as Legal, Accounting, Finance, Payroll, Human
15 Resources and Research and Development are located in Georgia. (Blandford
16 Decl., ¶ 3.) Orkin’s principal place of business is therefore in Georgia, and Orkin
17 is a citizen of Delaware and Georgia.

18 12. Defendants Does 1 through 10, inclusive, are fictitious. The
19 Complaint does not set forth the identity or status of any said fictitious
20 defendants, nor does it set forth any charging allegation against any fictitious
21 defendants. Pursuant to Section 1441, the citizenship of defendants sued under
22 fictitious names must be disregarded for the purpose of determining diversity
23 jurisdiction and cannot destroy the diversity of citizenship between the parties in
24 this action. 28 U.S.C. § 1441(a); *see also Newcombe v. Adolf Coors Co.*, 157 F.3d
25 686, 690-91 (9th Cir. 1998).

26 13. Accordingly, Plaintiff is a citizen of a state different from Orkin.

27 ///

28 ///

AMOUNT IN CONTROVERSY

14. Plaintiff's Complaint does not specify the amount in controversy. The failure of the Complaint to specify the total amount of damages or other monetary relief sought by Plaintiff, however, does not deprive this Court of jurisdiction. *See Saulic v. Symantec Corp.*, No. SA CV 07-610 AHS (PLAx), 2007 WL 5074883, *5 (C.D. Cal. Dec. 26, 2007); *White v. J. C. Penney Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D. W.Va. 1994) (defendant may remove suit to federal court notwithstanding failure of plaintiff to plead specific dollar amount in controversy; if the rules were otherwise, "any Plaintiff could avoid removal simply by declining . . . to place a specific dollar claim upon its claim.").

15. Plaintiff attempts to circumvent CAFA by alleging that the "aggregate claim, including attorneys' fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005." (Compl., ¶ 4.) However, Plaintiff does not support this proposition with any factual allegations about the amount in controversy. In fact, Plaintiff articulates no basis for evaluating whether the allegations he has made and the action he has initiated do or do not embrace the jurisdictional thresholds set by CAFA.

16. Plaintiff's attempt to plead around CAFA does not deprive this court of jurisdiction under CAFA. Notwithstanding Plaintiff's failure to specify the total amount of monetary relief claimed, and notwithstanding Plaintiff's attempt to plead around CAFA, the Class Action Fairness Act authorizes the removal of class actions in which, among other factors mentioned above, the aggregated amount in controversy for all potential class members exceeds five million dollars (\$5,000,000). *See* 28 U.S.C. § 1332(d); *Muniz v. Pilot Travel Centers LLC*, No. CIV 5-07-0325 FCD EFB, 2007 WL 1302504, *1 (E.D. Cal. May 1, 2007) (finding removal of action substantially similar to instant action proper under CAFA); *Lowdermilk v. U.S. Bank Nat'l Assn.*, 479 F.3d 994 (9th Cir. 2007) (holding that a defendant may remove a case under CAFA by establishing to a

1 legal certainty that damages exceed \$5,000,000.00, notwithstanding the plaintiff
 2 pleading in the complaint damages below the \$5,000,000.00 threshold). While
 3 Orkin denies Plaintiff's claims of wrongdoing and denies his requests for
 4 relief thereon, the facial allegations in Plaintiff's Complaint and the total
 5 amount of wages, penalties, attorneys' fees, and other monetary relief at
 6 issue in this action is in excess of this Court's jurisdictional minimum, *Saulic*,
 7 2007 WL 5074883, *7-9 (considering facts presented in notice of removal,
 8 including defendant's declarations, along with plaintiff's allegations in finding
 9 jurisdictional limits satisfied under CAFA); *Luckett v. Delta Airlines, Inc.*, 171
 10 F.3d 295, 298 (5th Cir. 1999) (same). Plaintiff's allegations place the amount in
 11 dispute as in excess of \$5,000,000.00, without even considering all of Plaintiff's
 12 allegations or all of the amounts of damages.

13 17. To begin with, Plaintiff alleges he and the putative class members
 14 "frequently worked over 12 hours in a single day, but were not paid premium
 15 double time wages for that work, as required under California law." (Compl., ¶
 16 21 (emphasis provided).) Plaintiff accordingly asserts claims for himself and the
 17 putative class for (1) failure to pay overtime wages; (2) failure to pay wages
 18 due upon termination under Labor Code § 203; and (3) failure to timely pay
 19 wages. (Compl., ¶¶ 28-36; 52 – 57.) Plaintiff also asserts claims for unpaid meal
 20 premiums (Compl., ¶¶ 24; 37 – 41) and unpaid rest break premiums. (Compl., ¶¶
 21 24; 42 – 45.) These allegations establish that the amount in controversy exceeds
 22 \$5,000,000, in light of the number of employees Plaintiff purports to represent.

23 (a) (1) **Unpaid Overtime.** Plaintiff seeks, on behalf of the putative
 24 class members and himself, unpaid overtime. Plaintiff fails to allege the exact
 25 amount of overtime he worked, but alleges that he and the other putative class
 26 members "frequently worked over twelve (12) hours in a single day." (Compl., ¶
 27 21 (emphasis provided).) The statute of limitations for unpaid overtime is three
 28 years. Cal. Civ. Proc. Code § 338(a); *Arechiga v. Dolores Press, Inc.* (2011) 192

1 Cal.App.4th 567, 570, fn 2. Plaintiff, however, brings a cause of action for unfair
2 competition under California Business & Professions Code section 17200 et seq.
3 As Plaintiff correctly states, a claim for unfair competition expands the statute of
4 limitations to four years, and allows plaintiffs to recover up to four years worth of
5 unpaid wages. California Business & Professions Code section 17208; Compl., ¶
6 61. Therefore, Plaintiff seeks four years worth of unpaid overtime wages on
7 behalf of himself and the class.

8 (2) Plaintiff alleges he was a pest control technician, and that his
9 duties involved “driving to client locations to apply chemicals to exterminate
10 various pests and maintain a pest-free environment.” Compl., ¶ 17.

11 (3) Tamera Roberson is a System Administrator of Rollins, Inc.
12 Orkin is a wholly owned subsidiary of Rollins, Inc. (Blandord Decl., ¶¶ 2 – 3). In
13 her capacity as a System Administrator, Ms. Roberson has regular access to and
14 can retrieve data and information, specifically including payroll and human
15 resources data for both Rollins and Orkin employees through a software system
16 called JDEdwards. (Declaration of Tamera Roberson, “Roberson Decl.”), ¶¶ 2 –
17 6.) Ms. Roberson regularly runs and creates reports using the JDEdwards
18 system about employees of both Orkin and Rollins. (Roberson Decl., ¶¶ 2 – 6.)

19 (4) Ms. Roberson ran a report that extracted data for all California
20 Pest Control Technicians who worked for Orkin at any time from April 27, 2007
21 to the present. The report is exported into Excel format, which allows Ms.
22 Roberson to apply formulas, such as averaging formulas, to the data. (Roberson
23 Decl., ¶¶ 9-11.)

24 (5) Ms. Roberson’s report indicates that Orkin employed 916
25 individuals in California as Pest Control Technicians from April 2007 to the
26 present. (Roberson Decl., ¶ 14.) The report lists each employee’s date of hire,
27 date of termination (if applicable), and their hourly rate.
28

1 (6) Hourly rate. Ms. Roberson averaged the hourly rate provided to
2 each employee by using the “average” formula in Excel. The data indicates that
3 the average hourly rate for all putative class members from April 27, 2007
4 through the present is **\$11.57** per hour. (Roberson Decl., ¶14.) This figure does
5 not include any possible overtime, commissions or bonuses. (Roberson Decl.,
6 ¶14.)

7 (7) Number of Pay Periods. Using each Pest Control Technicians’
8 hire and termination dates, the number of pay periods worked by each Technician
9 in the Class Period by can be determined by calculating the number of days
10 between the date of termination and the employee’s last date of hire. Where the
11 employee’s date of hire preceded April 27, 2007, Ms. Roberson calculated the
12 time they were employed between only April 27, 2007 through their termination
13 date (or the present for current employees). (Roberson Decl., ¶14.) For instance,
14 if a Pest Control Technician started on June 3, 2006, and separated on August 19,
15 2010, Ms. Roberson measured that Technician’s employment from only April 27,
16 2007 through August 19, 2010 for purposes of calculating the number of pay
17 periods in the Class Period. (Roberson Decl., ¶14.) Orkin employees are paid on
18 a semi-monthly basis. (Roberson Decl., ¶12.) Ms. Roberson was also able to
19 determine the number of pay periods worked by each employee in the putative
20 class period by determining the number of days between the date of termination
21 and the date of hire, and dividing by 15. (Roberson Decl., ¶14.) Under a semi-
22 monthly payroll system, the average pay period is actually 15.208 days.
23 Therefore assuming a 15-day pay period is conservative. Moreover, Ms.
24 Roberson has assumed that each employee worked only 10 days in any given 15
25 day pay-period. (Roberson Decl., ¶14.) In any case, Ms. Roberson’s report
26 concludes that the 916 putative class members, over a four-year period, worked a
27 total of **46,261.8** pay periods. (Roberson Decl., ¶14.)
28

(8) The amount of overtime allegedly worked. Plaintiff fails to allege the amount of overtime he worked, but alleges that he and the other putative class members “frequently worked over twelve (12) hours in a single day.” (Compl., ¶ 21 (emphasis provided).) Notably, where a plaintiff merely alleges having “worked in excess of eight (8) hours in a day,” an assumption of one hour of overtime is reasonable. *Jimenez v. Allstate Ins. Co.*, No. CV 10-8486 AHM (FFMx), 2011 WL 65764, at *2-3 (C.D. Cal. Jan. 7, 2011). In contrast, Plaintiff does not merely allege working “more” than 8 hours; to the contrary, Plaintiff alleges he “frequently” worked “over” twelve hours per day (and would therefore be entitled to double time). Out of an abundance of caution, it seems reasonable and conservative to assume Plaintiff worked at least 11 hours (or three overtime hours per day).

(9) Assuming Plaintiff worked three hours of overtime per day amounts to approximately 15 hours of overtime per week or 30 hours of overtime per pay period. Overtime is paid at time and a half of the regular hourly rate. Thus, using an average hourly rate of \$11.57 per hour, the overtime rate would be $\$11.57 \text{ per hour} \times 1.5 = \17.35 per hour . At $\$17.35 \times 30 \text{ hours of overtime per pay period} \times 46,261 \text{ pay periods}$, Plaintiff seeks a total of **\$24,085,789.65**. Even assuming *arguendo* that Plaintiff and class members are owed the *statutory minimum* for hourly overtime wages of \$12 per hour, Plaintiff and his class members seek total unpaid wages of $\$12.00 \text{ of overtime} \times 30 \text{ hours per pay period} \times 46,261 \text{ pay periods} = \mathbf{\$16,653,960.00}$.

(10) Even more conservative calculations confirm that Plaintiff seeks enormous sums of money through this action. For instance, Plaintiff specifically alleges Orkin automatically deducted his pay for meal periods he never took. (Compl., ¶¶ 32, 40, 48 - 51.) In other words, at the very least, Plaintiff appears to allege he should be entitled to *at least* 30 minutes of hourly overtime simply for the 30 minutes worth of time that was automatically

deducted from his pay. (Compl., ¶¶ 32, 40, 48 - 51.) Therefore assuming just 2.5 overtime hours per week (30 minutes x 5 days per week), or 5 overtime hours per pay period, Plaintiff is still seeking $\$17.35 \times 5 \text{ hours} \times 46,261 = \text{\$4,013,141.75}$. And this calculation includes *only* the lost overtime from alleged automatic deductions for missed meal periods, does not include any other overtime, and does not include the double time Plaintiff seeks for “frequently” working more than 12 hours per day. (Roberson Decl., ¶14.)

(b) (1) **Waiting Time Penalties.** Plaintiff alleges Defendant also failed to pay employees’ final wages upon termination, and that it therefore owes waiting time penalties under Labor Code section 203. (Compl., ¶ 55.) As Plaintiff points out, section 203 permits a terminated employee to collect up to 30 days’ wages if wages are not paid in full. Cal. Labor Code § 203; Compl., ¶ 54. Section 203 carries a three year statute of limitations. *See Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1102 (2007). Accordingly, the purported class period for Plaintiff’s waiting time penalties claim runs from April 27, 2008 (three years prior to the date on which the complaint was filed), to the present.

(2) Ms. Roberson’s report concludes that at least **334** putative class members were separated from their employment with Orkin from April 27, 2008 through June 7, 2011. (Roberson Decl., ¶16.) The average hourly wage earned by the terminated employees in that time period was **\\$11.58** per hour (which does not include the unspecified overtime Plaintiff alleges he and the putative class members worked). While Plaintiff alleges he “frequently” worked more than 12 hours per day, Orkin is willing to assume each employee worked only 8 hours per day. Assuming just 8 hours per day, the separated employees average daily wage **\\$92.64** per day. Each employee would be entitled to 30 days’ worth of wages, which would equate to \$2,779.20 per employee. (Roberson Decl., ¶ 17.) This amount, multiplied by 334 employees, equates to **\\$928,252.80**

1 in waiting time penalties allegedly owed. Notably, assuming the 334 employees
 2 worked just 11 hours per day (still below Plaintiff's assertion that he and the class
 3 members "frequently" worked more than 12 hours per day) would put at issue
 4 **\$1,450,395.**

5 (c) Meal Periods. Plaintiff alleges he and the putative class members
 6 were not provided meal periods in violation of California Labor Code section
 7 226.7. (Compl. ¶¶ 38 - 40.) Claims for failure to provide a meal period are
 8 subject to a three year statute of limitations. *See Murphy v. Kenneth Cole*
 9 *Productions, Inc.*, 40 Cal. 4th 1094, 1099, 1100 (2007). Plaintiff therefore seeks
 10 on behalf of the putative class one hour of premium pay for each day worked,
 11 dating back to the three year period prior to the complaint being filed. The
 12 average hourly rate for Plaintiff and the putative class members is **\$11.61** per
 13 hour during the three year period prior to the complaint being filed. (Roberson
 14 Decl., ¶18.) In that same three-year period, Ms. Roberson's report concludes that
 15 **786** employees worked at least **34,876** pay periods. (Roberson Decl., ¶18.)
 16 Assuming just 10 work days per 15-day pay period, Plaintiff has put at issue
 17 **\$4,049,103.60** (10 days per pay period x 34,876 pay periods worked by all
 18 employees in a three-year period x \$11.61= **\$4,049,103.60**). (Roberson Decl.,
 19 ¶18.)

20 (d) Rest breaks. Plaintiff alleges he and the putative class members are
 21 entitled to collect one hour of premium pay for each day worked because they
 22 were not provided rest breaks. (Compl. ¶¶ 42 - 45.) Claims for failure to provide
 23 a rest break are subject to a three-year statute of limitations. *See Murphy v.*
 24 *Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1099, 1100 (2007). Plaintiff
 25 therefore seeks on behalf of the putative class one hour of premium pay for each
 26 day worked, dating back to the three year period prior to the complaint being
 27 filed. The average hourly rate for Plaintiff and the putative class members is
 28 **\$11.61** per hour during the three year period prior to the complaint being filed.

(Roberson Decl., ¶ 19.) In that same three-year period, Ms. Roberson's report concludes that **786** employees worked at least **34,876** pay periods. Assuming just 10 work days per 15-day pay period, Plaintiff has put at issue **\$4,049,103.60** (10 days per pay period x 34,876 pay periods worked by all employees in a three-year period x \$11.61 = **\$4,049,103.60**). (Roberson Decl., ¶ 19.)

(f) Considering only the most *conservative* valuations, Plaintiff's claims easily exceed the \$5,000,000 threshold. For instance, focusing only on Plaintiff's allegation that he was not paid overtime as a result of automatic deductions for meal periods, Plaintiff has placed \$4,013,141.75 in controversy. Plaintiff's meal period and rest period claims are worth more than \$4,049,103 *each*. Also, Plaintiff seeks waiting time penalties of at least \$928,000.00. Without including attorneys' fees, Plaintiff has put about **\$13,039,347.00** at issue.

(g) Attorneys' Fees. Plaintiff also seeks reasonable attorneys' fees in his Complaint. (Compl. ¶¶ 36, 63, Prayer, First Cause of Action ¶ 3, Prayer, Second Cause of Action, ¶ 4.) It is well settled that, in determining whether a complaint meets the amount in controversy requirement, the Court should consider the aggregate value of claims for damages as well as attorneys' fees. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998) (attorneys' fees may be taken into account to determine jurisdictional amounts). In California, where wage and hour class actions have settled prior to trial for millions of dollars, it is not uncommon for an attorneys' fee award to be twenty-five to thirty percent of the settlement and, thus, in this case, potentially in excess of \$3,259,836 ($\$13,039,347.00 \times 25\%$)² for a total of **\$16,299,183.00**. Again,

² *See Abasi v. HCA, the Healthcare Co. Inc.*, C.D. Cal. No. CV 03-7606 (May 9, 2005) (approving \$4.75 million settlement for claims of unpaid overtime, meal and rest break periods; attorney's fee award totaling over \$1.2 million).

1 these numbers are premised on the most conservative and modest assumptions.
2 Plaintiff's overtime claim alone could actually exceed \$24,000,000.00.

3 (h) Based on the foregoing, under the Class Action Fairness Act,
4 Plaintiff's claims for damages, penalties, attorneys' fees and other monetary
5 relief far exceed the \$5 million jurisdictional limit of this Court, as required by 28
6 U.S.C. § 1332, subd. (d).

7 16. The amount in controversy based on the facial allegations of
8 Plaintiff's Complaint is, to a legal certainty, greater than the jurisdictional
9 amount of \$5 million required by CAFA.

10 17. As a result, although Orkin denies Plaintiff's claims of wrongdoing,
11 denies that a class can be certified and denies the requests for relief, based upon
12 the facial allegations in Plaintiff's Complaint and assuming *arguendo* Plaintiff
13 was able to prove these allegations, the total amount of monetary relief sought by
14 Plaintiff and the proposed putative other class members is in excess of \$5
15 million, exclusive of interest and costs. Therefore, removal of this action is
16 appropriate.

17 **TIMELINESS OF REMOVAL**

18 18. This Notice of Removal is timely in that it has been filed within
19 thirty (30) days of Orkin's first notice of the Complaint on June 9, 2011.

20 19. The Class Action Fairness Act applies to actions that were
21 "commenced" on or after February 18, 2005. Because this action was filed on
22 April 27, 2011, it was "commenced" after February 18, 2005, as required by
23 CAFA. Therefore, removal is proper under CAFA.

24 **NOTICE TO PLAINTIFF**

25 20. Contemporaneously with the filing of this Notice of Removal in the
26 United States District Court for the Central District of California, Southern
27 Division, written notice of such filing will be served on Plaintiff's counsel of
28 record at, Rex Sofonio of Sofonio & Associates, APLC. In addition, a copy of

1 this Notice of Removal will be filed with the Clerk of the Court for Superior
2 Court for the State of California, County of Orange.

3 21. A notice to all adverse parties has been filed in the Superior Court
4 for the State of California, County of Orange, a true and correct copy of which
5 (without exhibits, which would consist of this Notice and its own exhibits) is
6 attached hereto as Exhibit "B". A notice of removal to the Superior Court for the
7 State of California, County of Orange has also been filed in that court, a true and
8 correct copy of which (without exhibits) is attached hereto as Exhibit "C".

9 23. WHEREFORE, having provided notice as required by law, the
10 above-entitled action should be removed from the Superior Court for the State of
11 California, County of Orange.

12 FISHER & PHILLIPS LLP

13
14 DATED: July 8, 2011

By: 

JOHN E. LATTIN, IV
CHRISTOPHER C. HOFFMAN
JAMES C. FESSENDEN
Attorneys for Defendant
ORKIN SERVICES OF
CALIFORNIA, INC.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) <i>Salazar v. Orkin Exterminating Company, Inc.</i>		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		
JOHN E. LATTIN (SBN 167876)		
CHRISTOPHER C. HOFFMAN (SBN 176334)		
JAMES C. FESSENDEN (SBN 167876)		
Email: jlattin@laborlawyers.com		TELEPHONE NO.:
Email: choffman@laborlawyers.com		Tel. (858) 597-9600
Email: mwinter@laborlawyers.com		Fax: (858) 597-9601
FISHER & PHILLIPS LLP		
4747 Executive Drive, Suite 1000		
San Diego, CA 92121		
ATTORNEYS FOR:	HEARING DATE - TIME	CASE NUMBER.
DEFENDANT ORKIN SERVICES		
CALIFORNIA, INC.		
PROOF OF SERVICE - DECLARATION OF SERVICE		

At the time of service I was over 18 years of age and not a party to this action. My residence or business address is: 4747 Executive Drive, Suite 1000, San Diego, CA 92121

On July 8, 2011: I served the following documents (specify):

1. CIVIL COVER SHEET;
2. CERTIFICATION OF INTERESTED PARTIES IN SUPPORT OF NOTICE OF REMOVAL UNDER CLASS ACTION FAIRNESS ACT;
3. NOTICE OF REMOVAL UNDER CLASS ACTION FAIRNESS ACT;
4. DECLARATION OF JAMES C. FESSENDEN IN SUPPORT OF NOTICE OF REMOVAL UNDER CLASS ACTION FAIRNESS ACT;
5. DECLARATION OF JEFFERSON BLANDFORD IN SUPPORT OF NOTICE OF REMOVAL UNDER CLASS ACTION FAIRNESS ACT;
6. DECLARATION OF TAMERA ROBERSON IN SUPPORT OF NOTICE OF REMOVAL UNDER CLASS ACTION FAIRNESS ACT

☐ The documents are listed in the Attachment to Proof of Service.

I served the documents on the **person or persons** below, as follows:

Rex Sofino (SBN 190671)
SOFINO & ASSOCIATES
2030 Main Street, Suite 1300
Irvine, CA 92614
Tel: (949) 260-9191
Fax: (949) 260-9192

Counsel for Plaintiff Israel Salazar

☐ **By ELECTRONIC SUBMISSION.** I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients **via electronic transmission through the CM/ECF system on the Court's website.** The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☐ **Additional parties' counsel who are not registered CM/ECF user according to the court's NEF, were served via the following means:**

☐ **By personal service.** I personally delivered copies to the person served.

☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine used. A copy of the record of transmission is attached.

PROOF OF SERVICE - DECLARATION OF SERVICE

Salazar v. Orkin Exterminating Company
Case No.

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addressed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I am readily familiar with this business practice for collection and processing envelopes and packages for overnight delivery. On the same day that envelope or package is placed for collection and delivery, it is deposited in the ordinary course of business with and overnight delivery service, in a sealed envelope or package.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.
Executed July 8 2011, at San Diego California


Lori Cutrell

EXHIBIT “A”

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

ORKIN EXTERMINATING COMPANY, INC.,
and DOES 1-10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ISRAEL SALAZAR, individually and on behalf of other
members of the Public Similarly Situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California
County of Orange

05/06/2011 at 12:11:00 PM

Clerk of the Superior Court
By James M Haines, Deputy Clerk

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

(AVISO) Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California
751 West Santa Ana Blvd
Santa Ana, CA 92701

CASE NUMBER: (Número del Caso):

30-2011-00470880-CU-OE-CXC

Hon. Gail A. Andler

Department CX-102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante, es):

Rex Sofonio, Esq.
2030 Main Street, Suite 1300
Irvine, CA 92614-7220

30-2011-00470880-CU-OE-CXC

Sofonio & Associates Judge Gail A. Andler
(949) 260-9191

DATE: 5/6/2011
(Fecha)

Alan Carlson, Clerk of the Court
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)

NOTICE TO THE PERSON SERVED: You are served James M Haines

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): **ORKIN EXTERMINATING COMPANY, INC.**
under:
 - ☒ CCP 418.10 (corporation)
 - ☐ CCP 418.20 (defunct corporation)
 - ☐ CCP 418.40 (association or partnership)
 - ☐ other (specify):

- ☐ CCP 418.60 (minor)
- ☐ CCP 418.70 (conservatee)
- ☐ CCP 418.90 (authorized person)

- ☐ by personal delivery on (date):



Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)



SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

Israel Salazar

Apr 27 2011 4:08PM Kustom Deluxe Printing

(562) 434-4022

P. 4

FILED
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 27 2011

ALAN CARLSON, Clerk of the Court

R. Lucey
BY R. LUCEY

1 SOFONIO & ASSOCIATES, APLC
2 Rex Sofonio (SBN 190671)
3 2030 Main Street, Suite 1300
4 Irvine, California 92614
5 Telephone: (949) 260-9191
6 Facsimile: (949) 260-9192
7 rex@sofoniolaw.com

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE, CIVIL COMPLEX CENTER **30-2011**

10 ISRAEL SALAZAR, Individually and on
11 Behalf of Other Members of the Public
12 Similarly Situated,

13 Plaintiff,

14 v.

15 ORKIN EXTERMINATING COMPANY,
16 INC., and DOES 1-10, inclusive,

17 Defendants.

Case No. **00470880**

**CLASS ACTION PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §382**

COMPLAINT FOR:

- (1) FAILURE TO PAY OVERTIME WAGES;
- (2) FAILURE TO PROVIDE MEAL PERIODS;
- (3) FAILURE TO PROVIDE REST PERIODS;
- (4) VIOLATION OF CALIFORNIA LABOR CODE
§§231, 224, 400-410;
- (5) FAILURE TO TIMELY PAY WAGES;
- (6) UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

**JUDGE GAILA ANDLER
DEPT. CX102**

21 COMES NOW plaintiff Israel Salazar ("Plaintiff"), individually and on behalf of others
22 similarly situated, and asserts claims against defendant Orkin Exterminating Company, Inc.
23 ("Orkin"), and Does 1-10, inclusive (collectively "Defendants") as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure

class action complaint for damages

THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO RULE 308 OF THE LOCAL RULES
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

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1 §382. The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction
2 limits of the California Superior Court and will be established according to proof at trial.

3 2. This Court has jurisdiction over this action pursuant to the California
4 Constitution Article VI §10, which grants the California Superior Court original jurisdiction in
5 all causes except those given by statute to other courts. The statutes under which this action is
6 brought do not give jurisdiction to any other court.

7 3. This Court has jurisdiction over Defendants because, upon information
8 and belief, each Defendant is either a resident of California, has sufficient minimum contacts
9 in California, or otherwise intentionally avails itself of the California market so as to render the
10 exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair
11 play and substantial justice.

12 4. The California Superior Court also has jurisdiction in this matter because
13 the individual claims of the members of the Classes herein are under the seventy-five thousand
14 dollar (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim, including
15 attorneys' fees, is under the five million dollar (\$5,000,000.00) threshold of the Class Action
16 Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are
17 based solely on California statutes and law, including the Labor Code, IWC Wage Orders, CCP,
18 California Civil Code ("CC") and B&PC.

19 5. Venue is proper in this Court because upon information and belief, one or
20 more of the Defendants, reside, transact business, or have offices in this County and the acts or
21 omissions alleged herein took place in this County.

22 **PARTIES**

23 6. Plaintiff is, and at all times mentioned in this complaint was, a resident of
24 California.

25 7. Plaintiff is informed and believes, and thereon alleges, that at all relevant
26 times mentioned herein, Defendants are organized and existing under the laws of California,
27 and were at all times mentioned herein licensed and qualified to do business in California. On
28

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1 information and belief, Plaintiff alleges that at all relevant times referenced herein Defendants did
2 and continue to transact business throughout California.

3 8. Whenever in this complaint reference is made to any act, deed, or conduct
4 of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
5 through one or more of its officers, directors, agents, employees, or representatives, who was
6 actively engaged in the management, direction, control, or transaction of the ordinary business
7 and affairs of Defendants.

8 9. Plaintiff is ignorant of the true names and capacities, whether individual,
9 corporate, associate, or otherwise, of the Defendants sued herein as Does 1 through 10, inclusive
10 and therefore sues said Defendants (the "Doe Defendants") by such fictitious names. Plaintiff
11 will amend this complaint to insert the true names and capacities of the Doe Defendants at such
12 time as the identities of the Doe Defendants have been ascertained.

13 10. Plaintiff is informed and believes, and thereon alleges, that the Doe
14 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
15 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
16 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
17 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
18 to the extent of the liability of the Defendants as alleged herein.

19 11. Plaintiff is further informed and believes, and thereon alleges, that at
20 all times herein material, each Defendant was completely dominated and controlled by its co-
21 Defendants and each was the alter ego of the other. Whenever and wherever reference is made
22 in this complaint to any conduct by Defendant or Defendants, such allegations and references
23 shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly,
24 and severally. Whenever and wherever reference is made to individuals who are not named as
25 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
26 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
27 their respective employments.
28

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CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure §382.

13. All claims alleged herein arise under California law for which Plaintiff seeks relief as authorized by California law.

14. The proposed class is comprised of and defined as:

Any and all persons who are or were employed as Pest Control Employees or equivalent positions, however titled, by Defendants in the state of California within four (4) years prior to the filing of the complaint in this action until resolution of this lawsuit (hereinafter collectively referred to as the "Class" or "Class Members").

Plaintiff's proposed subclass is comprised of and defined as:

All Class members whose employment was terminated at any time within three (3) years prior to the filing of the complaint in this action until resolution of this lawsuit (hereinafter collectively referred to as the "Waiting Time Subclass" or the "Subclass").

15. There is a well defined community of interest in this litigation and the members of the Class and Subclass are easily ascertainable as set forth below:

a. **Numerosity:** The members of the Class and Subclass are so numerous that joinder of all members of the Class and Subclass would be unfeasible and impractical. The membership of the entire Class and Subclass is unknown to Plaintiff at this time, however, the Class is estimated to be greater than one hundred (100) individuals, and the Waiting Time Subclass is estimated to be greater than fifty (50) individuals, and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. **Typicality:** Plaintiff is qualified to, and will fairly and adequately protect the interests of each member of the Class and Subclass with whom she has a well defined community of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief which would be sought by each member of the Class and/or Subclass in separate actions.

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1 All members of the Class and/or Subclass have been similarly harmed by being denied wages,
2 including overtime wages, due to Defendants' policies and practices that affected each member of
3 the Class and/or Subclass similarly. Further, Defendants benefited from the same type of unfair
4 and/or wrongful acts as to each member of the Class and/or Subclass.

5 c. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
6 the interests of each member of the Class and/or Subclass with whom he has a well defined
7 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
8 that he has an obligation to make known to the Court any relationships, conflicts, or differences
9 with any member of the Class and/or Subclass. Plaintiff's attorneys and the proposed counsel for
10 the Class and Subclass are versed in the rules governing class action discovery, certification,
11 litigation, and settlement and experienced in handling such matters. Other former and current
12 employees of Defendants may also serve as representatives of the Class and Subclass if needed.

13 d. Superiority: The nature of this action makes the use of class action
14 adjudication superior to other methods. A class action will achieve economies of time, effort,
15 judicial resources, and expense compared to separate lawsuits. The prosecution of separate
16 actions by individual members of the Class and/or Subclass would create a risk of inconsistent
17 and/or varying adjudications with respect to the individual members of the Class and/or Subclass,
18 establishing incompatible standards of conduct for the Defendants, and resulting in the
19 impairment of the rights of the members of the Class and/or Subclass and the disposition of their
20 interests through actions to which they were not parties.

21 e. Public Policy Considerations: Employers in the state of California violate
22 employment and labor laws everyday. Current employees are often afraid to assert their rights
23 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
24 because they believe their former employers may damage their future endeavors through negative
25 references and/or other means. The nature of this action allows for the protection of current and
26 former employees' rights without fear or retaliation or damage.

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1 f. Commonality: There are common questions of law and fact as to the Class
2 and Subclass that predominate over questions affecting only individual members including, but
3 not limited to:

4 1. Whether Defendants failed to pay premium overtime compensation to
5 Plaintiff and Class Members for hours Plaintiff and Class Members worked in excess of eight (8)
6 hours per day and/or forty (40) hours per week, and double time wages for work over twelve (12)
7 hours in a day;

8 2. Whether Defendants' failure to pay premium overtime compensation,
9 without abatement or reduction, in accordance with the California Labor Code ("Labor Code")
10 was willful;

11 3. Whether Defendants' failed to include commissions in the regular rate of
12 pay for overtime calculation purposes;

13 4. Whether Defendants failed to pay wages in accordance with the timing
14 requirements of Labor Code §203;

15 5. Whether Defendants failed to pay Plaintiff and members of the Waiting
16 Time Subclass all wages earned either at the time of discharge, or within seventy-two (72) hours
17 of their voluntarily leaving Defendants' employ;

18 6. Whether Defendants failed to provide meal periods and rest breaks in
19 accordance with Labor Code §512 and the applicable Industrial Welfare Commission ("IWC")
20 wage order;

21 7. Whether Defendants failed to record meal periods in accordance with the
22 applicable IWC wage order;

23 8. Whether Defendants failed to reimburse Plaintiff and Class Members for
24 all necessary business expenses;

25 9. Whether Defendant made unlawful deductions without written
26 authorization;

27 10. Whether Defendants' conduct was willful and/or reckless;
28

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class action complaint for damages

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11. Whether Defendants engaged in unfair competition in violation of California Business & Professions Code §§17200, et seq.; and

12. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

FACTUAL ALLEGATIONS

18. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of Pest Control Employees or equivalent positions with similar job duties, however titled, throughout the state of California.

17. Defendants employed Plaintiff as a "Pest Control Employee" through May 1, 2008. In that capacity, Plaintiff's duties included driving to client locations to apply chemicals to exterminate various pests and maintain a pest free environment.

18. Defendants continue to employ Pest Control Employees, or individuals in equivalent positions with similar job duties, however titled, throughout the state of California.

19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

20. During the relevant time frame, Plaintiff and Class Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work week, but were not paid premium overtime wages for all that work, as required under California law.

21. During the relevant time frame, Plaintiff and Class Members frequently worked over twelve (12) hours in a single day, but were not paid premium double time wages for that work, as required under California law.

22. During the relevant time frame, Plaintiff and Class Members performed duties that would not qualify them as exempt under the administrative, professional, executive, outside sales, or any other overtime exemption under California law.

23. During the relevant time frame, Defendants compensated Plaintiff and

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1 Class Members based on both an hourly and commission basis that did not always account to
2 properly calculate overtime for all hours worked.

3 24. During the relevant time frame, Plaintiff and Class Members were
4 systematically denied meal periods and rest breaks due to the demands of Defendants and
5 Defendants' clients. Nevertheless, Defendants never paid Plaintiff, and on information and
6 belief, never paid Class Members an extra hour of pay as required by California law where meal
7 periods and rest breaks were not provided. Defendants failed to track all hours worked or meal
8 period start/end times in violation of the applicable wage order.

9 25. During the relevant time frame, Defendants took back previously paid and
10 earned wages through deductions for business losses (including losses due to account collection
11 issues) without written authorization.

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants
13 know, should know, knew, and/or should have known that Plaintiff and the other Class Members
14 were entitled to receive premium wages for overtime compensation, double time compensation,
15 and premium wages under Labor Code §226.7 but were not receiving such compensation.

16 27. Plaintiff is informed and believes, and thereon alleges, that at all
17 times herein mentioned, Defendants knew that they had a duty to compensate Plaintiff and
18 Class Members premium wages, and that Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so, and
20 falsely represented to Plaintiff and Class Members that they were properly denied wages, all in
21 order to increase Defendants' profits.

22 **CLASS ACTION CLAIMS**

23 **FIRST CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES**

24 **By Plaintiff and Class Against All Defendants**

25 28. Plaintiff repeats and incorporates herein by reference each and every
26 allegation set forth above, as though fully set forth herein.

27 29. At all times relevant, the IWC wage orders applicable to Plaintiff's and
28

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1 Class Members' employment by Defendants provided that employees working for more than
2 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation
3 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
4 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve
5 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

6 30. Labor Code §510 codifies the right to overtime compensation at the rate of
7 one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in
8 a day or forty (40) hours in a work week and to overtime compensation at twice the regular rate
9 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
10 day on the seventh day of work in a particular work week.

11 31. At all times relevant, Plaintiff and Class Members consistently worked in
12 excess of eight (8) hours in a day and/or forty (40) hours in a week.

13 32. At all times relevant, Defendants failed to pay overtime wages owed to
14 Plaintiff and Class Members by unlawfully automatically deducting wages for meal periods
15 not provided, and failing to correctly include the commissions into the regular rate of pay for
16 overtime calculations purposes.

17 33. At all times relevant, Plaintiff and Class Members regularly performed
18 non-exempt work in excess of 50% of the time, and thus, were subject to the overtime
19 requirements of the applicable IWC wage orders and the Labor Code.

20 34. Defendants' failure to pay Plaintiff and Class Members the unpaid balance
21 of premium overtime compensation violates the provisions of Labor Code §510 and §1198, and
22 the applicable IWC wage orders and is therefore unlawful.

23 35. Accordingly, Defendants owe Plaintiff and Class Members overtime
24 wages, and have failed and refused, and continue to fail and refuse, to pay Plaintiff and Class
25 Members the overtime wages owed.

26 36. Pursuant to Labor Code §1194, Plaintiff and Class Members are entitled to
27 recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.
28

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SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS

By Plaintiff and Class Against All Defendants

37. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

38. Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

39. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of the work of the employee must prevent an employee from being relieved of all duties relating to his or her work for the employer and the employees must consent in writing to the "on duty" meal period. Plaintiff and Class Members did not consent in writing to an "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not such that Plaintiff and Class Members are prevented from being relieved of all duties. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and Labor Code §512 and §226.7, Plaintiff and Class Members were not provided with meal periods and were not relieved of all duties during any meal periods Plaintiff and Class Members did take.

40. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide Plaintiff and Class Members, in their roles as Pest Control Employees, or equivalent positions with similar job duties, however titled, first and sometimes the second meal breaks of not less than thirty (30) minutes pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants. In addition, Defendants failed to record meal

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periods for Plaintiff and Class Members in accordance with the applicable IWC wage order. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at time of trial.

41. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period was not provided.

THIRD CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS

By Plaintiff and Class Against All Defendants

42. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

43. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period mandated by an applicable order of the IWC. Defendants were required to authorize and permit employees such as Plaintiff and Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours, or major fraction thereof, with no deduction from wages. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members, in their roles as Pest Control Employees, or equivalent positions with similar job duties, however titled, to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

44. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide Plaintiff and Class Members the required rest periods pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and Labor Code §226.7.

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class action complaint for damages

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1 As a proximate result of the aforementioned violations, Plaintiff and Class Members have been
2 damaged in an amount according to proof at time of trial.

3 45. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
4 recover one (1) hour of premium pay for each day in which a rest period was not provided.

5 **FOURTH CAUSE OF ACTION FOR UNLAWFUL DEDUCTIONS FROM WAGES IN**
6 **VIOLATION OF CALIFORNIA LABOR CODE §§ 221, 224**

7 **By Plaintiff and Class Against All Defendants**

8 46. Plaintiff incorporates by reference and realleges each and every allegation
9 contained above, as though fully set forth herein.

10 47. Labor Code §221 provides that "[i]t shall be unlawful for any employer to
11 collect or receive from an employee any part of wages theretofore paid by said employer to said
12 employee." Labor Code §221 prohibits an employer from taking back earned wages.

13 48. Defendants collected portions of earned wages from Plaintiff and Class
14 Members. These deductions were in violation of Labor Code §221.

15 49. Defendants are liable to Plaintiff and the Class for wages Defendants
16 deducted from Plaintiff's and Class Members' wages that had already been earned and/or paid in
17 an amount according to proof at the time of trial.

18 50. Plaintiff alleges that Defendants unlawfully made deductions from
19 Plaintiff's and Class member's earned wages without written authorization and that those
20 deductions unlawfully reduced Plaintiffs' and Class Members' standard wages in violation of
21 Labor Code §224.

22 51. Defendants are liable to Plaintiff and Class Members for the value of these
23 unlawful deductions.

24 **FIFTH CAUSE OF ACTION FOR FAILURE TO TIMELY PAY WAGES DUE**

25 **By Plaintiff, Class Members, and Waiting Time Subclass Against All Defendants**

26 52. Plaintiff repeats and incorporates herein by reference each and every
27 allegation contained above, as though fully set forth herein.

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class action complaint for damages

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1 53. California Labor Code §204 requires that wages earned be paid within
2 certain timeframes, including:

3 Labor performed between the 1st and 15th days, inclusive, of any calendar month
4 shall be paid for between the 16th and the 26th day of the month during which
5 the labor was performed, and labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for between the 1st and 10th day
of the following month.

7 During the relevant time frame, Defendants failed to pay Plaintiff and Class Members in
8 accordance with the requirements of Labor Code §204 by issuing wage payments less frequently
9 than ten days after the pay period end.

10 54. Labor Code §§201-202 requires an employer who discharges an employee
11 to pay compensation due and owing to said employee immediately upon discharge and that if
12 an employee voluntarily leaves his or her employment, his or her wages shall become due and
13 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
14 two (72) hours previous notice of his or her intention to quit, in which case the employee is
15 entitled to his or her wages on their last day of work. Labor Code §203 provides that if an
16 employer willfully fails to pay compensation promptly upon discharge, as required by Labor
17 Code §§201-202, the employer is liable for waiting time penalties in the form of continued
18 compensation for up to thirty (30) work days.

19 55. During the relevant time period, Defendants willfully failed and refused,
20 and continue to willfully fail and refuse, to pay Plaintiff and members of the Waiting Time
21 Subclass their wages, earned and unpaid, either at the time of discharge, or within seventy-two
22 (72) hours of their voluntarily leaving Defendants' employ. These wages include the premium
23 wages that were improperly calculated and underpaid, the wages deducted for meal periods never
24 provided, and the unlawfully deducted wages without written authorization, all due and owing
25 within the time frame specified by Labor Code §§201-202.

26 56. Defendants' willful failure to pay Plaintiff and Waiting Time Subclass
27 Members their wages earned and unpaid at the time of discharge, or within seventy-two (72)
28 hours of their voluntarily leaving Defendants' employ, violates Labor Code §§201-202.

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class action complaint for damages

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57. As a result, Defendants are liable to Plaintiff and members of the Waiting Time Subclass for waiting time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

SIXTH CAUSE OF ACTION FOR UNFAIR COMPETITION

By Plaintiff and Class Against All Defendants

58. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

59. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

60. Defendants' policies, activities, and actions as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§17200, et seq.

61. A violation of California Business and Professions Code §§17200, et seq., may be predicated on the violation of any state or federal law. In the instant case, Defendants' policy and practice of failing to pay Plaintiff and Class Members overtime wages over the past four (4) years violates Labor Code §1198, §510, and §203. Defendants' policy of failing to provide Plaintiff and the Class with meal periods and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not provided violates Labor Code §512, and §226.7. Furthermore, Defendants made unlawful deductions from earned wages, without authorization, and to cover Defendants' own business losses, all in violation of Labor Code §221 and §224.

62. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

63. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff and Class Members are entitled to restitution of the wages withheld and retained by

Apr 27 2011 4:13PM

Kustom Deluxe Printing

(562) 434-4022

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1 Defendants during a period that commences four (4) years prior to the filing of this complaint; an
 2 award of attorneys' fees pursuant to Labor Code §218.5, and §1194, and California Code of Civil
 3 Procedure §1021.5; interest; and an award of costs.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

6 **Class Certification**

- 7 1. That this action be certified as a class action;
- 8 2. That Plaintiff be appointed as the representative of the Class;
- 9 3. That Plaintiff be appointed as the representative of the Subclass; and
- 10 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclass.

11 **On the First Cause of Action**

- 12 1. For compensatory damages in an amount equal to the amount of unpaid overtime
 13 and double time compensation owed to Plaintiff and Class Members;
- 14 3. For pre-judgment interest on any unpaid overtime compensation due from the day
 15 that such amounts were due;
- 16 3. For reasonable attorneys' fees and costs pursuant to Labor Code §1194; and
- 17 4. For such other and further relief as the Court deems proper.

18 **On the Second Cause of Action**

- 19 1. For one (1) hour of premium pay for each day in which a required meal period was
 20 not provided; and
- 21 2. For such other and further relief as the Court deems proper.

22 **On the Third Cause of Action**

- 23 1. For one (1) hour of premium pay for each day in which a required rest period was
 24 not provided; and

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2. For pre-judgment interest on any wages Defendants deducted from the day that such amounts were deducted according to proof;

3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

1. For statutory penalties pursuant to Labor Code §203;

2. For interest for wages untimely paid; and

3. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for their past failure to pay overtime wages over the last four (4) years in an amount according to proof;

2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for their past failure to pay premium wages for meal and/or rest periods that were not provided to Plaintiff and Class Members over the last four (4) years in an amount according to proof;

3. For pre-judgment interest on any unpaid overtime wages due from the day that such amounts were due;

4. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under Labor Code §218.5, and §1194, and California Code of Civil Procedure §1021.5;

5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to recover under Labor Code §218.5, and §1194; and

6. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: April 26, 2011

SOFONIO & ASSOCIATES, APLC

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class action complaint for damages

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By: 
REX SOFONIO, ESQ.

Attorneys for Plaintiff ISRAEL SALAZAR
and for Members of the Class and Subclass

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class action complaint for damages

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the Yellow Pages under "Arbitrators" or "Mediators"

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA). For information regarding DRPA, contact:

- Community Service Programs, Inc. (949) 851-3168
- Orange County Human Relations (714) 834-7198

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) pilot programs is available on the Court's website at www.occourts.org.

Telephone No.:
E-Mail Address (Optional):
ATTORNEY FOR (Name):

Bar No:

JUSTICE CENTER:

- ☐ Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045
- ☐ Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512
- ☐ Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653-1251
- ☐ Harbor - Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595
- ☐ North - 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92638-0500
- ☐ West - 8141 13th Street, Westminster, CA 92683-0500

DEFENDANT/RESPONDENT:

CASE NUMBER:

and defendant(s)/respondent(s), _____

☐ Mediation

- ☐ Arbitration (must specify code)
- ☐ Under section 1141.11 of the Code of Civil Procedure
- ☐ Under section 1280 of the Code of Civil Procedure

☐ Neutral Case Evaluation

The ADR process must be completed no later than 90 days after the date of this Stipulation or the date the case was referred, whichever is sooner.

- ☐ I have an Order on Court Fee Waiver (FW-003) on file, and the selected ADR Neutral(s) are eligible to provide pro bond services.

- ☐ The ADR Neutral Selection and Party List is attached to this Stipulation.

We understand that there may be a charge for services provided by neutrals. We understand that participating in an ADR process does not extend the time periods specified in California Rules of Court rule 3.720 et seq.

Date: _____

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

Date: _____

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

Approved for Optional Use
L1270 (Rev. January 2010)

California Rules of Court, rule 3.221

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 05/18/2011 TIME: 02:37:00 PM DEPT: CX102
JUDICIAL OFFICER PRESIDING: Gail A. Andler
CLERK: Mary White
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT:

CASE NO: 30-2011-00470880-CU-OE-CXC CASE INIT.DATE: 04/27/2011
CASE TITLE: **Salazar vs. Orkin Exterminating Company, Inc**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 71236888
EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

Each party who has not paid the Complex fee of \$ 550.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

The Case Management Conference is scheduled for 06/28/2011 at 09:00 AM in Department CX102.

Plaintiff shall, at least 5 court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a brief, objective summary of the case, its procedural status, the contentions of the parties and any special considerations of which the Court should be aware. Other parties who think it necessary may also submit similar summaries three court days prior to the hearing. DO NOT use the Case Management Statement form used for non-complex cases (Judicial Council Form CM-110).

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 308. Plaintiff shall give notice of the Status Conference and the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

Clerk to give notice to Plaintiff and Plaintiff to give notice to all other parties.

DATE: 05/18/2011
DEPT: CX102

MINUTE ORDER

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Calendar No.

CASE TITLE: Salazar vs. Orkin Exterminating
Company, Inc

CASE NO: 30-2011-00470880-CU-OE-CXC

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 18-MAY- 2011, at Santa Ana, California. ALAN CARLSON /EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: M.WHITE deputy.

SOFOONIO & ASSOCIATES
REX SOFOONIO
2030 MAIN STREET, STE 1300
IRVINE, CA 92614

DATE: 05/18/2011
DEPT: CX102

MINUTE ORDER

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Calendar No.

EXHIBIT “B”

FISHER & PHILLIPS LLP
John E. Lattin, IV (SBN 167876)
E-mail: jlattin@laborlawyers.com
2050 Main Street, Suite 1000
Irvine, CA 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

FISHER & PHILLIPS LLP
Christopher C. Hoffman (SBN 176334)
E-mail: choffman@laborlawyers.com
James C. Fessenden (SBN 238663)
E-mail: jfessenden@laborlawyers.com
4747 Executive Drive, Suite 1000
San Diego, CA 92121-3095
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CIVIL COMPLEX CENTER

ISRAEL SALAZAR, Individually and on
Behalf of Others Members of the Public
Similarly Situated,

Plaintiff,

v.

ORKIN EXTERMINATING COMPANY,
INC., and DOES 1-10, inclusive,

Defendants.

CASE NO. 30-2011-00470880-CU-OE-
CXC

*Assigned for all purposes to the
Honorable Gail A. Andler, Dept. CX102*

DEFENDANT'S NOTICE TO
ADVERSE PARTIES OF REMOVAL

Action Filed: April 27, 2011

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1 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 8, 2011, Defendant Orkin Services of
3 California, Inc. (erroneously sued as "Orkin Exterminating Company, Inc.") filed a Notice of
4 Removal of this action from Superior Court of California, County of Orange to the United
5 States District Court for the Central District of California. A true and correct copy of said
6 Notice of Removal is attached hereto as **Exhibit "1"**.

7
8 FISHER & PHILLIPS LLP

9 DATED: January 20, 2011

10 By: 

11 JOHN E. LATTIN, IV
12 CHRISTOPHER C. HOFFMAN
13 JAMES C. FESSENDEN
14 Attorney for Defendant Orkin Services of
15 California, Inc.
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ORANGE COUNTY SUPERIOR COURT, STATE OF CALIFORNIA		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) Salazar v. Orkin Exterminating Company, Inc.		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): JOHN E. LATTIN (SBN 167876) CHRISTOPHER C. HOFFMAN (SBN 176334) JAMES C. FESSENDEN (SBN 167876) Email: jlattin@laborlawyers.com Email: choffman@laborlawyers.com Email: jfessenden@laborlawyers.com FISHER & PHILLIPS LLP 4747 Executive Drive, Suite 1000 San Diego, CA 92121		
TELEPHONE NO.: Tel. (858) 597-9600 Fax: (858) 597-9601		
ATTORNEYS FOR: Defendant ORKIN SERVICES OF CALIFORNIA, INC.		
HEARING DATE - TIME		
		CASE NUMBER: 30-2011-00470880
PROOF OF SERVICE—CIVIL		
Check method of service (only one): <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Messenger Service </div> <div> <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Fax </div> <div> <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Electronic Service </div> </div>		

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is: 4747 Executive Drive, Suite 1000, San Diego, CA 92121
3. ☐ The fax number or electronic notification address from which I served the documents is (complete if service was by fax or electronic service):
4. On July 8, 2011: I served the following documents (specify):

DEFENDANT'S NOTICE TO ADVERSE PARTIES OF REMOVAL

- ☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

5. I served the documents on the **person or persons** below, as follows:

a. Name of person(s) served: *Rex Sofino, Counsel for Plaintiff Israel Salazar*

- b. ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.) Business or residential address where person was served:

Rex Sofino (SBN 190671)
 SOFINO & ASSOCIATES
 2030 Main Street, Suite 1300
 Irvine, CA 92614
 Tel: (949) 260-9191
 Fax: (949) 260-9192

Counsel for Plaintiff Israel Salazar

- c. ☐ (Complete if service was by fax or electronic service.)

(1) Fax number or electronic notification address where person was served:

(2) Time of service:

- ☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

6. The documents were served by the following means (specify):

- a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5.
 (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's

PROOF OF SERVICE - CIVIL

Salazar v. Orkin Exterminating Company, Inc.
Case No. 30-2011-00470880

residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify, one):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Diego, California:

- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 8, 2011


LORI CUTRELL

EXHIBIT “C”

FISHER & PHILLIPS LLP
John E. Lattin, IV (SBN 167876)
E-mail: jlattin@laborlawyers.com
2050 Main Street, Suite 1000
Irvine, CA 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

FISHER & PHILLIPS LLP
Christopher C. Hoffman (SBN 176334)
E-mail: choffman@laborlawyers.com
James C. Fessenden (SBN 238663)
E-mail: jfessenden@laborlawyers.com
4747 Executive Drive, Suite 1000
San Diego, CA 92121
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

Attorneys for Defendant
ORKIN SERVICES OF CALIFORNIA, INC.
(erroneously sued as "Orkin Exterminating Company, Inc.")

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CIVIL COMPLEX CENTER

ISRAEL SALAZAR, Individually and on
Behalf of Others Members of the Public
Similarly Situated,

Plaintiff,

v.

ORKIN EXTERMINATING COMPANY,
INC., and DOES 1-10, inclusive,

Defendants.

CASE NO. 30-2011-00470880-CU-OE-
CXC

*Assigned for all purposes to the
Honorable Gail A. Andler, Dept. CX102*

DEFENDANT'S NOTICE OF
REMOVAL

Action Filed: April 27, 2011

PLEASE TAKE NOTICE THAT on July 8, 2011, Defendant Orkin Services of
California, Inc., (erroneously sued as "Orkin Exterminating Company, Inc.") by and through
its attorneys, filed with the United States District Court for the Central District of California, its
Notice of Removal of this action, a true and correct copy of which is attached hereto as

1 **Exhibit "1."** Pursuant to 28 U.S.C. § 1446(d), the filing of the aforesaid Notice of Removal in
2 the District Court, together with the filing of this Notice with this Court, effects the removal of
3 this action, and this Court may not proceed further with the above-captioned litigation unless
4 and until the case is remanded.

5 FISHER & PHILLIPS LLP

6
7 DATED: July 8, 2011

By: 

JOHN E. LATTIN, IV
CHRISTOPHER C. HOFFMAN
JAMES C. FESSENDEN

Attorneys for Defendant
ORKIN SERVICES OF CALIFORNIA,
INC.

ORANGE COUNTY SUPERIOR COURT, STATE OF CALIFORNIA		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) Salazar v. Orkin Exterminating Company, Inc.		TELEPHONE NO.: Tel. (858) 597-9600 Fax: (858) 597-9601
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): JOHN E. LATTIN (SBN 167876) CHRISTOPHER C. HOFFMAN (SBN 176334) JAMES C. FESSENDEN (SBN 167876) Email: jlattin@laborlawyers.com Email: choffman@laborlawyers.com Email: jfessenden@laborlawyers.com FISHER & PHILLIPS LLP 4747 Executive Drive, Suite 1000 San Diego, CA 92121		
ATTORNEYS FOR: Defendant ORKIN SERVICES OF CALIFORNIA, INC.		
HEARING DATE - TIME		
CASE NUMBER: 30-2011-00470880		
PROOF OF SERVICE—CIVIL		
Check method of service (only one):		
<input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service		

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is: 4747 Executive Drive, Suite 1000, San Diego, CA 92121
3. ☐ The fax number or electronic notification address from which I served the documents is (complete if service was by fax or electronic service):
4. On July , 2011: I served the following documents (specify):

DEFENDANT'S NOTICE OF REMOVAL

- ☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

5. I served the documents on the **person or persons** below, as follows:

a. Name of person(s) served: *Rex Sofino, Counsel for Plaintiff Israel Salazar*

- b. ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.) Business or residential address where person was served:

Rex Sofino (SBN 190671)
SOFINO & ASSOCIATES
2030 Main Street, Suite 1300
Irvine, CA 92614
Tel: (949) 260-9191
Fax: (949) 260-9192

Counsel for Plaintiff Israel Salazar

- c. ☐ (Complete if service was by fax or electronic service.)

- (1) Fax number or electronic notification address where person was served:
- (2) Time of service:

- ☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

6. The documents were served by the following means (specify):

- a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5.
 (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's

PROOF OF SERVICE - CIVIL


Salazar v. Orkin Exterminating Company, Inc.
Case No. 30-2011-00470880

residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify, one):
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Diego, California:
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 8, 2011


LORI CUTRELL

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Israel Salazar, Individually and on Behalf of Other Members of the Public Similarly Situated	DEFENDANTS Orkin Exterminating Company, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Rex Sofonio, Rex Sofonio & Associates, APLC 949-260-9191 2030 Main Street, Suite 1300 Irvine, CA 92614	Attorneys (If Known) John E. Lattin/Christopher C. Hoffman/James E. Fessenden Fisher & Phillips LLP 949-851-2424 2050 Main Street, Suite 1000 Irvine, CA 92614

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> <td style="width:10%; border: none; text-align: center;"><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:30%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> <td style="width:10%; border: none; text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/></td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5 <input checked="" type="checkbox"/></td> <td style="border: none;"></td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/></td> <td style="border: none;"></td> <td style="border: none;"></td> </tr> </table>	Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/>			Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/>		
Citizen of This State	PTF DEF	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/>														
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/>																
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/>																

IV. ORIGIN (Place an X in one box only.)
☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT: \$** Over \$5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 USC § 1332

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 28 USC 7609
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FOR OFFICE USE ONLY: Case Number: SACV11-1014 JST(ANx)

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

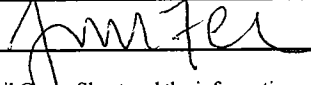
- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Georgia

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involvedX. SIGNATURE OF ATTORNEY (OR PRO PER):  Date 7/8/11

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Josephine Tucker and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV11- 1014 JST (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.